

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 09 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SALVADOR GUTIERREZ-GALVAN,

Defendant - Appellant.

No. 07-50315

D.C. No. CR-06-02429-JAH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted June 18, 2008^{**}

Before: REINHARDT, LEAVY, and W. FLETCHER, Circuit Judges.

Salvador Gutierrez-Galvan appeals from the 71-month sentence imposed following his guilty-plea conviction for transporting illegal aliens causing serious

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

bodily injury, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (a)(1)(B)(iii). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Gutierrez-Galvan contends that the district court erred by increasing his offense level under both U.S.S.G. §§ 2L1.1 and 3C1.2. He also contends that the district court erred when it enhanced his sentence pursuant to § 3C1.2 because it applied the enhancement based on conduct that did not create a risk of serious bodily injury. We agree that the district court erred. *See United States v. Lopez-Garcia*, 316 F.3d 967, 970-71 (9th Cir. 2003); *cf. United States v. Campbell*, 42 F.3d 1199, 1205-06 (9th Cir. 1994). However, we conclude that the errors are harmless because the district court stated that it would impose the same sentence even if its application of § 3C1.2 was in error. *See United States v. Menyweather*, 447 F.3d 625, 633-34 (9th Cir. 2006).

AFFIRMED.